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| APPLICATION NO.              | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------|-------------|----------------------|---------------------|------------------|
| 10/665,272                   | 09/17/2003  | David Russell King   | FB0756US (#90400)   | 5469             |
| 28672                        | 7590        | 11/15/2004           | EXAMINER            |                  |
| D. PETER HOCHBERG CO. L.P.A. |             |                      | BROWN, PETER R      |                  |
| 1940 EAST 6TH STREET         |             |                      | ART UNIT            |                  |
| CLEVELAND, OH 44114          |             |                      | PAPER NUMBER        |                  |
|                              |             |                      | 3636                |                  |

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                             |           |
|------------------------------|-------------------------------|-----------------------------|-----------|
| <b>Office Action Summary</b> | Application No.<br>10/665,272 | Applicant(s)<br>KING ET AL. |           |
|                              | Examiner<br>Peter R. Brown    | Art Unit<br>3636            | <i>KW</i> |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no definite antecedent basis for "the seat back frame" and "the backrest frame".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,4-7,10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Shats et al.

Figures 1-3 show structure as claimed, including a seat 24, a seat back 28 and a backrest 26 displaceably arranged relative to the seat by means of a locking mechanism 40,42,46 having a concealed operating mechanism 38a,50.

Note that the backrest is movable from a position substantially in register with the seat (fig. 2a) to an extended position (2b).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuebler.

Figure 1 shows structure similar to that claimed, including a seat base 12, back frame 14, and displaceable backrest 16. To have formed the back and backrest as upholstered box frames, for aesthetic purposes, would have been obvious to one with ordinary skill in the art, as such are old and well known in the art.

Claims 1,8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Opsvik.

Figures 1 and 6 show a backrest 3 that is displaceable relative to a seat back 14 by means of a pneumatic displacement system 30.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Burritt, Schmidt, Barabas, Proctor, Zacharkow, Scolari and Galloway show various features of the invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter R. Brown whose telephone number is 703-308-2103. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter R. Brown  
Primary Examiner  
Art Unit 3636

prb